MAYER BROWN LLP
JOHN NADOLENCO (SBN 181128)
jnadolenco@mayerbrown.com
CHRISTOPHER MURPHY (SBN 120048)
cmurphy@mayerbrown.com
350 South Grand Avenue, 25th Floor
Los Angeles, CA 90071-1503
Telephone: (213) 229-9500
Facsimile: (213) 625-0248

NEIL DYMOTT FRANK MCFALL
& TREXLER APLC
MICHAEL I. NEIL
mneil@neildymott.com
1020 2nd Avenue, Suite 2500
San Diego, CA 92101-4959
Telephone: (619) 238-1712
Facsimile: (619) 238-1562

Attorneys for Plaintiff
BLACKWATER LODGE AND TRAINING CENTER, INC., dba BLACKWATER WORLDWIDE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BLACKWATER LODGE AND TRAINING CENTER, INC., a Delaware corporation dba Blackwater Worldwide,

Plaintiff,

v.

KELLY BROUGHTON, in his capacity as director of the Development Services Department of the City of San Diego; AFSANEH AHMADI, in her capacity as Chief Building Official of the City of San Diego; THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN DIEGO; THE CITY OF SAN DIEGO, a municipal entity; and DOES 1-20, inclusive,

Defendants.

Case No. 08 Cv 0926 H (WMC)

SELECTED PROVISIONS OF THE SAN DIEGO MUNICIPAL CODE

Date: August 11, 2008
Time: 10:00 A.M.
Place: Courtroom Of The Honorable Marilyn L. Huff

For the Court's convenience, Plaintiff Blackwater Lodge and Training Center, Inc. dba Blackwater Worldwide ("Blackwater") herewith attaches selected provisions of the San Diego Municipal Code.

Dated: July 28, 2008

MAYER BROWN LLP
JOHN NADOLENCO
CHRISTOPHER MURPHY

By: s/John Nadolenco
John Nadolenco
Attorneys for Plaintiff BLACKWATER LODGE AND TRAINING CENTER, INC., dba BLACKWATER WORLDWIDE

Article 3: Firearms — Dangerous Weapons — Explosives — Hazardous Trades

("Firearms — Dangerous Weapons — Explosives — Hazardous Trades" incorp. 1–22–1952 by O–5046 N.S.)

§53.01 Blasting — Permit Required

It shall be unlawful for any person or persons, firm or corporation to do any blasting within the corporate limits of the City of San Diego without first having obtained, from the Fire Chief of The City of San Diego, a permit, which is required under California Health and Safety Code, Section 12101. The Fire Chief of The City of San Diego is hereby designated the issuing authority in conformance with California Health and Safety Code, Section 12007.
("Blasting— Permit Required" amended 2–22–1972 by O–10787 N.S.)

§53.01.1 Blasting — Application For License — Insurance Required

Any applicant to the San Diego Fire Department for a permit for the use of explosives within the limits of the City of San Diego for blasting, as provided above, shall, before such permit is issued, have a policy of insurance approved by the City Attorney, executed and delivered by a reliable insurance company authorized to carry on an insurance business in the State of California, by the terms of which said insurance company assumes responsibility for injuries to persons and property resulting by reason of the use of such explosives by applicant in the following amounts; to wit,

Bodily Injury $250,000 — Per person

$500,000 — Per occurrence Property Damage

$250,000 — Per occurrence.
(Amended 2–22–1972 by O–10787 N.S.)

§53.10 Firearms, Etc. — Firing Prohibited — Exceptions

(a) Purpose and Intent. It is the purpose and intent of the Council of The City of San Diego that the firing of firearms and other explosives within the city limits be strictly regulated for the protection of all persons and property located in the City.

(b) Definitions. For the purposes of this section:

(1) Firearm shall mean any weapon from which a missile, such as, but not limited to, a bullet, ball, or shell, is hurled by an explosive.

(2) Fire shall mean to explode, discharge, or impel by using heat, percussion or electric spark.

(3) The term explosive is defined as it is in Section 53.05 of this Article.

(c) Prohibition. No person shall fire any firearm or explode any explosive within The City of San Diego.

(d) Exceptions. This section does not apply to firearms fired under the authority of the United States or the State of California, nor to shooting galleries or target ranges; nor where a permit has been issued or a firing area designated by the City Council pursuant to Subsections (e) and (f) hereof.

(e) Permits. The City Council, by resolution, may issue written permits to fire firearms upon such terms and under such conditions as it deems proper. The terms and conditions imposed by the Council shall be set forth on the face of any permit issued under this subsection.

(f) The City Council, by resolution, may designate certain areas within the City in which it shall be lawful to fire firearms upon such terms and under such conditions as the Council deems proper.

(Amended 10–8–1964 by O–9092 N.S.)

§53.15 Air Guns, Sling Shots, Pointed Missiles, Etc. — Discharge, Propelling Prohibited

That it shall be unlawful for any person to discharge any air gun, or sling shot, or bean shooter, or throw, hurl, heave or propel any sharp pointed missile, or dart, or arrow upon any public street or sidewalk or public gathering place within the corporate limits of The City of San Diego.

("Air Guns, Sling Shots, Pointed Missiles, Etc. — Discharge, Propelling Prohibited" incorp. 1–22–1952 by O–5046 N.S., contained in O–61 N.S., adopted 10–24–1932.)

§111.0205 City Staff

(a) Authority. The City Manager may designate a staff member to make an impartial decision, without a public hearing, on a permit, map, or other matter in accordance with the decision-making procedures of the Land Development Code.

(b) Appointment and Terms. The City Manager will determine whom to appoint and the length of time the staff member will serve as a decision maker.

(c) Powers and Duties. Designated City staff will act as the decision maker to decide permits, maps, or other matters in accordance with the decision-making procedures of the Land Development Code.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§111.0206 Historical Resources Board

(a) Authority. The Historical Resources Board has been established by the City Council in accordance with the City Charter, Section 43.

(b) Appointment and Terms

(1) The Historical Resources Board shall consist of 11 members, each appointed by the Mayor and subject to confirmation by the City Council. Each member shall serve a 2-year term without compensation and shall continue to serve until a successor is appointed. No member shall serve more than 4 consecutive terms. The members shall be appointed so that the terms of not more than 6 members will expire in any year. The expiration date of all terms of appointment shall be March 1. The Mayor may designate 1 member as Chairperson during March of each year. If the Mayor has not designated a chairperson by April 15, the Board shall elect a Chairperson from among its members.

(2) At least one Board member shall be appointed from among professionals in each of the following disciplines as required to meet the "Certified Local Government" criteria of the State Office of Historic Preservation , as established by the National Historic Preservation Act: architecture, history, architectural history, archaeology, and landscape architecture. Other members appointed may have experience or background in law, real estate, engineering, general contracting, finance, planning, or fine arts and should reflect diverse neighborhood representation and have demonstrated a special interest in historical preservation. No more than three owners of *designated historical resources* shall serve at any time.

(4) Any person who has an approved and executed Disposition and Development Agreement with the Redevelopment Agency of the City of San Diego

(b) Submittal Requirements. The application shall be made on a form provided by the City Manager and shall be accompanied by the materials, information, fees, and deposits that are required on the date the application is filed, unless otherwise specified by the Land Development Code. The application shall be *deemed complete* when the department processing the application has determined that the application includes all of the information, materials, fees, and deposits required by this section and Section 112.0202. After the application has been *deemed complete*, the City Manager may not request any new or additional materials, information, fees, or deposits that were not specified at the time of application, except as provided by state law. The City may, however, in the course of processing the application, request that the *applicant* clarify, simplify, or provide in alternate format or medium, the information required for the application.

(c) Materials and Information. The City Manager shall maintain a list specifying the materials and information to be submitted with each application for a permit, map, or other matter filed in accordance with the Land Development Code. The list may be revised on a quarterly basis or as needed to comply with revisions to local, state, or federal law, regulation, or policy. The revised list shall be posted at the City, shall become effective on the 30th calendar day after posting, and shall apply to all applications submitted after that date. The City Manager shall provide a copy of the list to all *applicants* and to any person who requests a copy.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 2-28-2005 by O-19360 N.S.)

§112.0103 Consolidation of Processing

When an *applicant* applies for more than one permit, map, or other approval for a single *development*, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for that *development* as set forth in Section 111.0105. The *findings* required for approval of each permit shall be considered individually, consistent with Section 126.0105.
(Added 12-9-1997 by O-18451 N.S.; amended 10-19-1999 by O-18691 N.S.; effective 1-1-2000.)

Article 2: Required Steps in Processing

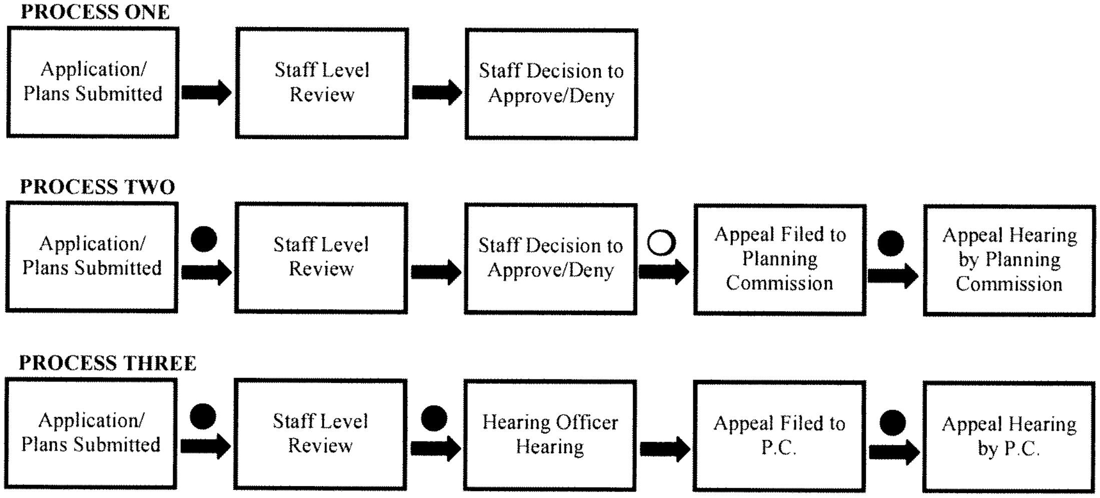
Division 5: Decision Process

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§ 112.0501 Overview of Decision Process

Applications for permits, maps, or other matters shall be acted upon in accordance with one of the five decision processes established in this division and depicted on Diagram 112-05A. The subject matter of the *development* application determines the process that shall be followed for each application. The provisions of Chapter 12 that pertain to each permit, map, or other matter describe the decision process in more detail. Diagram 112-05A is provided for convenience of reference only and does not define, describe, or limit the scope, meaning, or intent of any provision of the Land Development Code. This diagram describes the City of San Diego's processes only and does not describe other decision processes that may be required by other agencies, such as the State Coastal Commission.

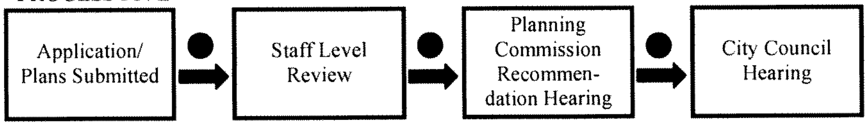
Diagram 112-05A
Decision Processes with Notices


PROCESS ONE
Application/ Plans Submitted
Staff Level Review
Staff Decision to Approve/Deny
PROCESS TWO
Application/ Plans Submitted
Staff Level Review
Staff Decision to Approve/Deny
Appeal Filed to Planning Commission
Appeal Hearing by Planning Commission
PROCESS THREE
Application/ Plans Submitted
Staff Level Review
Hearing Officer Hearing
Appeal Filed to P.C.
Appeal Hearing by P.C.

PROCESS FOUR

Application/ Plans Submitted
Staff Level Review
Planning Commission Hearing
Appeal Filed to City Council
Appeal Hearing by City Council

PROCESS FIVE


Application/ Plans Submitted
Staff Level Review
Planning Commission Recommen-dation Hearing
City Council Hearing

Key

● Public Notice to Property Owners and Tenants within 300 Feet and to Community Planning Groups

○ "Limited" Notice to Applicant and Anyone Requesting Notice

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000; amended 6-19-2000 by O-18814 N.S.)
(Amended 11-28-2005 by O-19444; effective 2-9-2006.)

§112.0502 Process One

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0503 Process Two

An application for a permit or other matter acted upon in accordance with Process Two may be initially approved, conditionally approved, or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held. An appeal hearing is available upon written request in accordance with Section 112.0504. A Process Two decision shall be made in the following manner.

(a) Notice. The designated staff person shall mail a Notice of Future Decision to the persons identified in Section 112.0302(b). Persons who wish to receive notice of the approval or denial of the application may request this information from the staff person. The request must be received no later than 10 *business days* after the date on which the Notice of Future Decision is mailed.

(b) Decision Process. The designated staff person may approve, conditionally approve, or deny the application without a public hearing. The decision shall be made no less than 11 *business days* after the date on which the Notice of Future Decision is mailed to allow for sufficient time for public comment.

(h) Any *structure* that is proposed for relocation that has been damaged, has had portions removed, has been cut into sections, or has been otherwise structurally altered after the pre-relocation examination may be considered a substandard *structure* or nuisance and may be abated in accordance with the Land Development Code.

(i) The City may take any appropriate enforcement action to abate a *public nuisance*, despite the issuance of any permits to maintain, alter, expand, demolish, or reconstruct a *structure*, or to operate or resume operation of a use.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 11-28-2005 by O-19444; effective 2-9-2006)

§121.0308 No Permission to Violate Codes

(a) The issuance or granting of any *development permit* or *construction permit* or any plan, specifications, computations, or inspection approval does not constitute a permit for, or an approval of, any violation of any of the provisions of the Land Development Code, including the Building, Electrical, Plumbing, or Mechanical Regulations or any other ordinance of the City. *Development permits*, *construction permits*, or inspections presuming to give authority to violate or cancel the provisions of the Land Development Code, Building, Electrical, Plumbing, or Mechanical Regulations or other ordinances of the City are not valid.

(b) The issuance of a *development permit* or *construction permit* based on plans, specifications, and other data does not prevent the City Manager from subsequently requiring the correction of errors in the plans, specifications, and other data or the Building Official from stopping building operations that are in violation of the Land Development Code or any other applicable law.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§121.0309 Procedure for Issuing a Stop Work Order

(a) Issuing a Stop Work Order. Whenever any work is being performed that is contrary to the provisions of the Land Development Code, the City Manager may order the work stopped by issuing a Stop Work Order. The Stop Work

Order shall be in writing and shall be served on any person engaged in the work or causing the work to be performed. The person served with the Stop Work Order shall stop the work until authorized by the City Manager to proceed.

§129.0106 Fees for Construction Permits

A fee for each *construction permit* application shall be paid at the time of application. The full *construction permit* fees shall be based on the reasonable cost of application, plan review, inspections, and other services as required for permit approval. The fees shall be paid in accordance with the schedule of fees established by resolution of the City Council and filed in the office of the City Clerk.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0107 Decision Process for Construction Permits

A decision on an application for a *construction permit* shall be made in accordance with Process One. The type of permit and the decision maker are described in Chapter 12, Article 9, Divisions 1 through 8.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0108 Issuance of a Construction Permit

After all required approvals, including any required *development permits*, have been obtained and all required fees have been paid, the Building Official may issue a *construction permit*. Construction shall not begin until the required permits have been issued.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0109 Use of Alternate Materials, Design, or Construction Methods

(a) The provisions of the Building, Electrical, Plumbing, or Mechanical Regulations are not intended to prevent the use of any alternate material, design, or construction method not specifically prescribed by the Building, Electrical, Plumbing, or Mechanical Regulations, provided the Building Official approves of their use.

(b) The Building Official may approve use of any alternate material, design, or construction method if the Building Official determines the following:

(1) That the proposed alternate material, design, or construction method would comply with the Building, Electrical, Plumbing, or Mechanical Regulations;

(2) That the proposed alternate material, design, or construction method is at least equivalent to the standards prescribed in the applicable regulation in terms of suitability, quality, strength, effectiveness, fire resistance, durability, safety, and sanitation; and

(3) That sufficient evidence has been submitted to substantiate any claims that may be made regarding the use of any proposed alternate material, design, or construction method.

§129.0113 When a Certificate of Occupancy Is Required

(a) No *structure* shall be used or occupied, and no change in the existing occupancy classification of a *structure* or portion of a *structure* shall be made until the Building Official has issued a certificate of occupancy approving that use or occupancy, except that existing Group R, Division 3 and Group U Occupancies do not require a Certificate of Occupancy.

(b) Changes in the character or use of a building shall not be made except as specified in the 2001 California Building Code Section 3405.

(Amended 9-24-2002 by O-19102 N.S.)

§129.0114 Issuance of a Certificate of Occupancy

The Building Official shall inspect the *structure* and if the Building Official finds no violations of the Land Development Code or other regulations that are enforced by the City's designated Code Enforcement Officials, the Building Official shall issue a Certificate of Occupancy. All work for which a Building Permit was issued must be complete and have had a final inspection before issuance of a Certificate of Occupancy, except in accordance with Section 129.0115. The Certificate of Occupancy must be signed by the Building Official.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0115 Issuance of a Temporary Certificate of Occupancy

If the Building Official finds that no substantial hazard will result from occupancy of any *structure* or portion of a *structure* before all work is completed, a temporary certificate of occupancy may be issued for the use of a *structure*, or portion of a *structure* before the completion of the entire *structure*. A Certificate of Occupancy is required upon completion of the remainder of the work.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0116 Posting of Certificate of Occupancy

The Certificate of Occupancy shall be posted in a conspicuous place on the *premises* and shall not be removed except by the Building Official.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0117 Temporary Construction Permit

The Building Official may issue a temporary *construction permit* in any zone for the construction of storage yards or temporary construction project offices. If a *development permit* has been issued for the site, the temporary *construction permit* shall be reviewed to determine that the proposed temporary construction is in accordance with the conditions of the *development permit*. The temporary uses may be allowed for a period not to exceed 9 months.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0212 Decision Process for a Building Permit

A decision on an application for a Building Permit shall be made by the Building Official in accordance with Process One. The Building Permit shall be approved if the Building Official finds that the work described in the permit application, plans, specifications, and other data comply with the requirements of the Building Regulations, other applicable laws and ordinances, and any applicable *development permit*.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0213 Issuance of a Building Permit

(a) The Building Permit may be issued after all approvals have been obtained and the required fees have been paid. In addition to plan check approvals, other documentation may be required before the permit is issued, in conformance with the requirements of the Land Development Code or the laws or requirements of other applicable local, state, or federal jurisdictions.

(b) A Building Permit shall not be issued for a *development* that requires a *development permit* until the *development permit* has been issued.

(c) Any security required by the Land Development Code for relocation of a *structure* shall be deposited with the City before the Building Permit is issued.

(d) If a pre-relocation examination finds that a residential *structure* is substandard, no Building Permit shall be issued until the plans are revised to include additional work that will eliminate the substandard condition.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0214 Requirements for Approved Plans

(a) Plans and specifications that are approved as part of the application for a Building Permit shall be signed and stamped "APPROVED" by the Building Official and shall be filed as an attachment to the Building Permit. Approved plans and specifications shall not be changed, modified, or altered without authorization of the Building Official.

(b) Except as required by Sections 19850 and 19851 of the Health and Safety Code, the building official shall retain one set of approved plans, specification and computations for a period of not less than 90 calendar days from the date of completion of the work authorized by those plans, after which time the building official may, at his or her discretion, either dispose of the copies or retain them as a part of the permanent files of the Development Services Department.

(Amended 9-24-2002 by O-19102 N.S.)
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

Article 17: Otay Mesa Development District

("Otay Mesa Development District" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

Division 2: Permits and Procedures

("Permits and Procedures" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0201 Administrative Regulations

(a) General Provisions

(1) The City Manager shall administer the Otay Mesa Development District Ordinance and ensure compliance with the regulations and procedures of this Ordinance. The Otay Mesa Community Plan as presently adopted or as amended from time to time, shall also be used in reviewing any development permit applied for under this Ordinance.

(2) The City Manager shall not issue any building permit for the erection, construction, conversion, establishment, alteration or enlargement of any building or structure in any portion of the Otay Mesa Development District until an Otay Mesa Development Permit has been obtained by the applicant or owner. Each application for a building permit or occupancy permit shall state therein the purpose for which the proposed building, structure or improvement is intended to be used. Approval of an Otay Mesa Development District Permit is not required for interior modifications, repairs or remodeling, nor any exterior repairs or alterations for which a building permit or occupancy permit is not required.

(3) Expansion or enlargement of previously conforming uses is not permitted in this Development District. Land Development Code Chapter 12, Article 7, Division 1 (General Review Procedures for Previously Conforming Premises and Uses) applies to previously conforming uses with the exception of those provisions which permit expansion or enlargement of a previously conforming use.

("Administrative Regulations" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0202 General Permit Procedures

(a) The following projects may be approved or denied by the City Manager in accordance with Process One, and do not require an Otay Mesa Development District Permit.

(1) The proposed use is consistent with the land use designation and text of the Otay Mesa Community Plan.

(2) The proposal is in compliance with this Ordinance, particularly Section 1517.0204 (Financing of Public Facilities), Section 1517.0301 (Permitted Uses), and Section 1517.0305 (Property Development Regulations).

(3) The proposal is within the Otay International Center Precise Plan Subdistrict (Section 1517.0302) and meets all regulations contained therein.

(b) The following projects shall be required to obtain an Otay Mesa Development District Permit in accordance with Section 1517.0203 (Otay Mesa Development District Permit):

(1) Any project that uses transfer of development rights and any project that uses acquired development rights.

(2) Any project within the Canyon and Hillside Subdistrict Section 1517.0303 (Canyon and Hillside Subdistrict).

(3) Any project which deviates from the regulations of this Ordinance.

(4) Any project which includes a hotel or motel.

(5) Any project for which a tentative map has not been approved subsequent to March 14, 1985 (Otay Mesa Reorganization).

(c) Any development within Otay Corporate Center North (VTM 88-1144) or South (VTM 89-0302) is subject to the Otay Corporate Center Design Guidelines, which are to be used in conjunction with this Ordinance.

("General Permit Procedures" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

special circumstances or conditions affecting the property in question, that granting suspension or variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and that the granting of the suspension or variance will not adversely affect the Progress Guide and General Plan of the City.

(f) Otay Mesa Development District Permits are issued to development projects and projects to operate facilities. The term "development" includes the following activities: landform alteration, grading, construction or reconstruction of buildings and parking areas, provision of on- and off-site public facilities, and landscaping. The term "operation" includes the conduct of business on a property consistent with City codes and regulations. The applicant seeking an Otay Mesa Development District Permit that involves the development may be charged development impact fees for both permanent and interim uses. Fees may be prorated for interim uses.

(g) The Hearing Officer's decision may be appealed to the Planning Commission in accordance with Land Development Code Section 112.0506.

("Otay Mesa Development District Permit" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0204 Financing of Public Facilities

(a) Purpose and Intent

The public health, safety, and welfare require that residents in newly developing areas be adequately served with access, parks, schools, open space, libraries, fire stations and other public facilities concurrent with the need.

(b) Financial Responsibility

All necessary public facilities shall be provided by the project applicant, either directly by the applicant or by other means such as a charge against the area within the Otay Mesa Development District in accordance with the adopted Otay Mesa Community Plan.

(c) Financial Programs for Municipal Facilities

The Municipal Facilities required for the Otay Mesa community shall be financed through these programs:

(1) Facilities Benefit Assessment or Development Impact Fee.

(A) For facilities which already exist outside of the Otay Mesa community, but which require additions or expansions to existing facilities to meet the requirements of the Otay Mesa community: i.e., police and public work facilities.

(B) For new facilities necessitated by the Otay Mesa community: i.e., fire station and transportation facilities.

(C) For facilities which extend beyond the limit of the Otay Mesa community, whose service area is also greater than the Otay Mesa community and the need for which is not solely created by the Otay Mesa community: costs for improvements so constructed may be partially offset by reimbursements from development in those service areas greater than the Otay Mesa community.

(D) For facilities within or without the community which are intended for the use of residents such as: street scene improvements (landscaping of the medians and right-of-way along major streets), traffic signals at the intersection of major streets, and other transportation facilities.

(2) Improvement District

An Improvement District under the provisions of state law or local procedural ordinance may be created to create assessments against the land to generate funds to finance facilities which are related to each individual planned district area by amount of benefit received. The facilities to be provided by this improvement district may include, but not be limited to: major perimeter streets; transit improvements; both municipal and other public utilities and drainage facilities contained therein. The boundary of each improvement district will be the centerline of the bordering perimeter streets, or other applicable limit, of each individual development plan area within the Otay Mesa community as the City shall determine.

(3) On-Site Municipal Improvements

The on-site municipal facilities, those within the individual neighborhood and not provided by Sections 1517.0204(c)(1)(A) and 1517.0204(c)(1)(B), such as: streets, storm drains, and sewer, water, gas, power, and telephone utilities, will be provided by the subdivider under the conventional bonded subdivision agreement.

(4) Off-Site Municipal Improvements

The off-site municipal improvements are those outside of an individual development plan area at the time of its development and not provided under the conventional subdivision process for off-site improvements. The off-site improvements so constructed may be subject to a reimbursement agreement between the persons who constructed the improvements and the City of San Diego. Reimbursement pursuant to that agreement will be generated by the subdivider(s) of the subsequent development plan areas, where adjacent, and will be paid to the appropriate subdivider(s) as and when such funds are generated within the subareas covered by the reimbursement agreement.

(5) Any other programs approved by the City Council.

(6) Implementation

No final subdivision map, building permit or Otay Mesa Development District Permit for the development of the property shall be approved by the City Manager unless and until the following have been accomplished:

(A) A financing plan for all public facilities needed to support the project, as required by the Otay Mesa Community Plan, has been adopted pursuant to Council Policy 600-28.

(B) There has been established either a Facilities Benefit Assessment or a Development Impact Fee applicable to the property covered by the development plan, or a greater area, and the City Council has by resolution, set the amount of such Facilities Benefit Assessment or Development Impact Fee.

(7) Financing Agreement

The requirements of Section 1517.0204(c)(4) (Off-Site Municipal Improvements) shall be deemed to be met if the project applicant has entered into a binding financing agreement, approved by the City Council. Said agreement shall require that the project applicant pay its pro rata share of all public facilities needed to support the project.

("Financing of Public Facilities" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

Article 17: Otay Mesa Development District

("Otay Mesa Development District" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

Division 3: Zones and Subdistricts

("Zones and Subdistricts" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0301 Permitted Uses

(a) Industrial Subdistrict

No building or improvement or portion thereof shall be erected, constructed, converted, established or enlarged, nor shall any premises be used except for one or more of the following purposes:

(1) All uses permitted in the IH-2-1 zone (Land Development Code Section 131.0622 Use Regulations Table for Industrial Zones).

(2) Research Services.

(A) Scientific research and development activities. Administrative offices shall be permitted in conjunction with the primary use where such office use is accessory and subordinate to the primary use.

(B) Manufacturing, fabrication, and/or production of products requiring advance technology and skills and directly related to research and development activities on the premises.

(C) Manufacturing of biochemical research and diagnostic compounds for scientific research and developmental testing purposes.

(D) Production of experimental products, and the manufacturing of such products as may be necessary to the development of production or operating systems where such systems are to be installed and operated at another location.

(E) Medical, dental, biological and X-ray laboratories.

(3) General Industrial

Establishments engaged in the custom manufacturing, manufacturing, fabricating, assembly, testing, repair, servicing, and processing of a wide range of products. Administrative offices shall be permitted in conjunction with the primary use where such office use is accessory and subordinate to the primary use.

(4) Motor Vehicles and Equipment

(A) Aircraft, automobile and boat repair shops

(B) Aircraft and accessories, sales or rental

(C) Boats and accessories, sales or rental

(D) Farm and construction vehicles, farm equipment, farm and garden supplies, sales or rental

(5) Construction Sales and Service

(A) Equipment and tool rental establishments

(B) Storage yards for building materials storage contractor's plant or storage yard, concrete pipe storage, impound storage yard

(C) Lumber sales

(D) Building and building maintenance materials

(E) Fire-fighting equipment and supplies sales

(F) Swimming pools and supplies sales

(6) Wholesaling, Storage and Distribution

(A) Storage warehouses

(B) Wholesale distribution of:

(i) Drugs, chemicals, and allied products

(ii) Dry goods and apparel

(iii) Groceries and related products

(iv) Electrical goods

(v) Hardware, plumbing, and heating equipment and supplies

(vi) Machinery, equipment and supplies

(vii) Tobacco and tobacco products

(viii) Beer, wine and distilled alcoholic beverages

(ix) Paper, paper products, and kindred supplies

(x) Furniture and home furnishings

(xi) Fuel and ice

(xii) Agricultural products

(xiii) Motor vehicles and automotive equipment

(C) Truck terminals and freight forwarding facilities.

(D) Customs brokerage operations.

(E) Postal services.

(F) Truck and tractor trailer parking facilities.

(7) Business Support Services

(A) These uses shall be limited to 5 percent of the gross ownership area. Projects utilizing business support service uses may be processed by using the Commercial Subdistrict Property Development Regulations contained in Section 1517.0305.

(B) The use of any property for business support service uses requires notice be given by certified mail to the City Manager for the purpose of recording the location and quantities of property to be used for such purposes. Such notice shall be filed with the City Manager prior to the City Manager's approval or denial of the ministerial permit.

(C) Business support service uses shall be the same as Commercial Subdistrict uses except that hotels, motels, and automobile and truck sales and rental agencies shall not be permitted.

(8) Major Utilities and Services

(A) Trade schools instructing in subjects related to a use permitted within the Industrial Subdistrict

(B) Emergency hospitals

(C) Central electric plants

(D) Public utility electric substations

(E) Data processing facilities

(9) Agricultural Uses

Uses permitted in the AR-1-2 or AR-1-1 zones (Land Development Code Section 131.0322 Use Regulations Table for Industrial Zones) except for single dwelling units and churches.

(b) Commercial Subdistricts

No building or improvement or portion thereof shall be erected, constructed, converted, established or enlarged, nor shall any premises be used except for one or more of the following purposes:

(1) Uses identified as business support uses in Section 1517.0301(a)(7) (Business Support Services)

(2) Business and professional office uses

(3) Labor unions and trade associations

(4) Medical, dental, biological and x-ray laboratories

(5) Hotels and motels

(6) Retailing of consumer convenience goods and dispensing of consumer services from the following establishments:

(A) Barber shops

(B) Beauty shops

(C) Drug stores

(D) Recreational facilities

(E) Stationers

(F) Automobile and truck sales and rental agencies

(G) Automobile wash establishments

(H) Financial institutions (including currency exchanges)

(I) Photographic equipment, supplies, and film processing stores

(J) Restaurants and bars, including live entertainment

(K) Tire sale, repair and recapping establishments if entirely within an enclosed building

(L) Custom shops for curtains, draperies, floor covering, upholstery and wearing apparel

(M) Laundries if entirely within an enclosed building

(N) Lithography shops and printing establishments

(7) Within the area bounded on the north by Otay Mesa Road, on the south by Airway Road, on the west by Alisa Court (to Airway Road), all uses described in section 1517.0301(a) are also permitted.

(c) Additional Uses - Commercial and Industrial Subdistricts

Other uses shall be permitted within the Commercial and Industrial Subdistricts as follows:

(1) Accessory uses for any of the foregoing permitted uses including signs. As specified in Land Development Code Chapter 14, Article 2, Division 12 (Sign Regulations), for sign regulatory purposes this Otay Mesa Development District shall be deemed to be an industrial zone.

(2) Any other uses which the Planning Commission finds, in accordance with Process Four, to be similar in character to the uses enumerated in the Otay Mesa Development District Ordinance and which are clearly within the intent and purpose of the Otay Mesa Development District. The adopted resolution embodying any such finding shall be filed in the office of the City Clerk.

("Permitted Uses" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0302 Otay International Center Precise Plan Subdistrict

In the Otay International Center Precise Plan Subdistrict identified on Map Drawing No. C-680.2, the property development regulations as set forth within the Otay International Center Precise Plan shall apply, and no building or improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except for one or more of the land uses permitted on the parcel by the Precise Plan.

("Otay International Center Precise Plan Subdistrict" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0303 Canyon and Hillside Subdistrict

(a) The Canyon and Hillside Subdistrict, as identified on Map Drawing No. C-680 shall be applied to properties having slopes with a natural gradient in excess of 25 percent and a minimum elevation differential of 50 feet.

(b) All projects within this Subdistrict shall require an Otay Mesa Development District Permit (Section 1517.0201(a)(2) Administrative Regulations). The regulations contained in Land Development Code Chapter 14, Article 3, Division 1 (Environmentally Sensitive Lands Regulations) Section 1517.0305 (Property Development Regulations) shall be used in processing the Otay Mesa Development District Permit.

(c) Permitted Uses: Industrial Subdistrict uses may be considered as appropriate uses in conjunction with processing of the Otay Mesa Development District Permit.

("Canyon and Hillside Subdistrict" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0304 Brown Field Flight Activity Subdistrict and Approach Zone

The Brown Field Flight Activity Subdistrict and Approach Zone, as identified on Map Drawing No. C-680.2, shall be applied to properties adjacent to the ends of the runways which aircraft use on either arrivals or departures.

The regulations contained in Section 1517.0305 (Property Development Regulations) and Section 1517.0404 (Special Regulations) shall be used in processing the application.

(a) Permitted Uses - Flight Activity Subdistrict

No building or improvement, or portion thereof, shall be erected, constructed, converted, established or enlarged, nor shall any premises be used except for one or more of the following purposes:

(1) Wholesaling, storage and distribution, however, warehousing or storage of flammables, explosives, and corrosives shall not be permitted.

(2) Agricultural uses permitted in the AR-1-1 or AR-2-1 zones (Land Development Code Section 131.0322) except for single dwelling units and churches.

(b) Permitted Uses - Approach Zones

Permitted uses in the approach zones shall be the same as the permitted uses in the underlying Industrial or Commercial Subdistricts.

(c) Federal Aviation Administration Determination Required

In addition to compliance with Section 1517.0305 (Property Development Regulations) and Section 1517.0306 (Design Standards) all proposed projects within the Brown Field Flight Activity Subdistrict and Approach Zones shall obtain a letter from the Air Traffic Division of the Western Pacific Regional Office of the Federal Aviation Administration stating that the proposed construction has been determined not to be a hazard to air navigation and such determination has become final.

("Brown Field Flight Activity Subdistrict and Approach Zone" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0305 Property Development Regulations

No building or portion thereof shall be erected, constructed, converted, established, altered, enlarged, nor shall any legal lot or premises be used unless the legal lot or premises and building comply with the following regulations and standards:

(a) Front, rear and street side yard setbacks on all Class I roadways as identified on Map Drawing No. C-680.2 shall be 30 feet.

(b) Two adjoining lots which have a common interior side or rear lot line and which are developed concurrently may be developed with zero side yard setbacks on said common lot line, provided that the opposite side yard setback is not less than 30 feet.

(c) All applications for the development of buildings or objects higher than 150 feet above ground level within this district shall be required to obtain Federal Aviation Administration Determination as provided in Section 1517.0304(c).

Table 1517-03A
Lot Requirements

	SUBDISTRICT	
	Industrial	**Commercial Lot**
Area	30,000 sq. ft.	10,000 sq. ft.
Street Frontage	100 ft.[1]	100 ft.
Lot Width	100 ft.	100 ft.
Minimum Yards		
Front Yard Setback	20 ft.	15 ft.
Interior Side Yard - Abutting residential zone	15 ft. 30 ft.	0 ft.
Street Side Yard Setback	20 ft.	15 ft.
Rear Yard Setback - Abutting residential zone	25 ft. 50 ft.	10 ft.
Floor Area Ratio	2.0	2.0

[1] Any lot which fronts on a turnaround or curving street having a radius of curvature of less than 100 feet, the minimum frontage shall be 60 feet.

("Property Development Regulations" added 3-27-2007 by O-19594 N.S.; effective 4-26-2007.)

§1517.0306 Design Standards

(a) Building Materials and Construction Types

(1) Industrial Subdistrict

Any building using other than concrete tilt-up, precast concrete, concrete block, wood or similar materials as the basic type of construction for 75 percent of the exterior walls shall require an Otay Mesa Development District Permit.

(2) Commercial Subdistrict and Business Support Services Where Processed Ministerially.

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; and that I served the individuals on the service list attached hereto the following documents:

Original of:

SELECTED PROVISIONS OF THE SAN DIEGO MUNICIPAL CODE

Filed July 28, 2008 on the ECF system and served pursuant to General Order No. 550, with:

Walter Clement Chung, Esq.
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
(619) 533-5800
(619) 533-5856 Facsimile
wchung@sandiego.gov

Attorneys for City of San Diego, Development Services Department of the City of San Diego, Afsaneh Ahmadi, Kelly Broughton

Donald H. McGrath
Office of the City Attorney
Criminal Division
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4100
(619) 533-5800
(619) 236-6018 Facsimile
dmcgrath@sandiego.gov

Attorneys for City of San Diego, Development Services Department of the City of San Diego, Afsaneh Ahmadi, Kelly Broughton

s/John Nadolenco
John Nadolenco
E-mail: jnadolenco@mayerbrown.com